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UNITED STATES OF AMERICA  
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14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 JOHN JACOB OLIVAS,

20 Defendant.  
21  
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ED CR No. 18-231-JGB

GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S MOTION *IN LIMINE* TO  
PRECLUDE REFERENCE TO GOVERNMENT  
WITNESSES AS "VICTIMS" (DKT. 78)

Hearing Date: November 15, 2021  
Hearing Time: 2:00 P.M.  
Location: Courtroom of the  
Hon. Jesús G. Bernal

23 Plaintiff United States of America, by and through its counsel  
24 of record, the Acting United States Attorney for the Central District  
25 of California and Assistant United States Attorneys Eli A. Alcaraz  
26 and Frances S. Lewis hereby files its opposition to defendant's  
27 motion in limine to preclude reference to government witnesses as  
28 "victims" (dkt. 78).

1        This opposition is based upon the attached memorandum of points  
2 and authorities, the files and records in this case, and such further  
3 evidence and argument as the Court may permit. Defendant's original  
4 motion disclosed the identities of the victims and was therefore  
5 filed under seal. The government does not believe the identities of  
6 the victims are relevant to its opposition and has therefore not  
7 sought to seal this brief. Defendant does not object to the public  
8 filing of this opposition.

9        Dated: October 26, 2021

Respectfully submitted,

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14                    /s/  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant John Jacob Olivas ("defendant") is charged with using his position and power as a federal law enforcement agent to sexually abuse two of his intimate partners -- K.L. and N.B. -- and prevent them from reporting his violence to law enforcement. Defendant's abuse of his federal law enforcement authority violated the victims' constitutional rights: namely, their rights to liberty and bodily integrity.

At trial, defendant seeks to prevent the government from referring to defendant's victims as victims. ("Motion," Dkt. 73.) The Motion concerns not only the charged victims, K.L. and N.B., but also potential additional government witnesses C.R., R.A., and M.H., who suffered uncharged abusive conduct and prior sexual assaults by defendant.<sup>1</sup> While the government does not intend to place undue emphasis on K.L. or N.B.'s status as a victim, they are both in fact the victims of the charged offenses. The Ninth Circuit has squarely held that it is appropriate to refer to victims in a criminal case as a "victim" at trial. For any additional government witnesses, including C.R., R.A., and M.H., the reasoning permitting the use of the word "victim" is equally applicable. Because there is direct Ninth Circuit authority on point concerning the term "victim," the Court should deny the Motion and defendant's request that K.L., N.B., C.R., R.A., and M.H. be referred to as "complaining witnesses" or "complainant." (Mot. at 3.)

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<sup>1</sup> Pending before the Court is the government's motion in limine to admit uncharged conduct of charged and uncharged victims. (Dkt. 80.)

1 **II. THE GOVERNMENT IS ENTITLED TO USE THE TERM "VICTIM" AT TRIAL**

2 The government should not be prohibited from using the term  
 3 "victim" at trial. Both K.L. and N.B. are in fact the victims of the  
 4 offenses, so neither the government nor its witnesses should be  
 5 precluded from using the word "victim." The Ninth Circuit has held  
 6 that it is appropriate to refer to the victim as a "victim" at trial.  
 7 United States v. Gibson, 690 F.2d 697, 703 (9th Cir. 1982) (in a  
 8 fraud prosecution, "[b]ecause of the losses incurred by these  
 9 investors, the prosecutor's use of the word 'victim' was fair comment  
 10 on the evidence"). Indeed, the Ninth Circuit has permitted the  
 11 government's use of far more inflammatory terms than "victim." See,  
 12 e.g., United States v. Rude, 88 F.3d 1538, 1547-48 (9th Cir. 1996)  
 13 (no error where the government used the following words to describe  
 14 defendants and their scheme in opening statement and throughout the  
 15 trial: "scam," "Ponzi scheme," "charlatans," "crooks," "evil,"  
 16 "trolling for victims," and "con man"); see also Guam v. Torre, 68  
 17 F.3d 1177, 11780 (9th Cir. 1995) ("There is no rule requiring the  
 18 prosecutor to use a euphemism for it or preface it by the word  
 19 'alleged.'"). Use of the word "victim" is a fair comment on the  
 20 evidence and it should be a permissible descriptor for charged  
 21 victims K.L. and N.B., as well as any other potential government  
 22 witness who has suffered sexual abuse from defendant, including C.R.,  
 23 R.A., and M.H.

24 Contrary to defendant's contention, the term "victim" does not,  
 25 standing alone, present any argument about the defendant's guilt.  
 26 Indeed, the model Ninth Circuit jury instruction for presenting  
 27 character evidence about a victim expressly refers to "specific  
 28 instances of the victim's character." Manual of Model Criminal Jury

1 Instructions for the Ninth Circuit, No. 4.5 (emphasis added). The  
2 use of the word "victim" "merely posits that if an act of sexual  
3 conduct or sexual penetration occurred, it must have been perpetrated  
4 on a victim." Server v. Mizell, 902 F.2d 611, 615 (7th Cir. 1990)  
5 (in a case about aggravated criminal sexual assault and aggravated  
6 criminal sexual abuse, rejecting the contention that the term  
7 "victim" "was improper because that word implied to the jury that a  
8 crime had already taken place"). Thus, in approving the use of the  
9 word "victim" in jury instructions in a criminal sexual assault  
10 trial, the Seventh Circuit concluded that "[n]o logical argument can  
11 be made that the mere use of the term 'victim' somehow shifted the  
12 burden of proof." Id. Given that the word "victim" is not  
13 inherently prejudicial and given that the jury instructions will  
14 adequately explain the burden of proof and the presumption of  
15 innocence, the government and its witnesses should not be  
16 categorically barred from using the term "victim".

17 Defendant cites primarily to out of district civil cases for the  
18 proposition that other courts have precluded the government from  
19 using the word "victim" as well as other terms. These cases focus  
20 the Court in the wrong direction because United States v. Gibson, 690  
21 F.2d 697 (9th Cir. 1982), provides that the use of the word "victim"  
22 in a criminal case can be a "fair comment on the evidence." Id. at  
23 703.

24 Further, unlike in the civil context, the Crime Victims' Rights  
25 Act defines who is and is not a "victim" for purposes of criminal  
26 cases. A crime victim is someone who is directly and proximately  
27 harmed as the result of a criminal offense -- the term attaches  
28 without regard to the stage of the proceeding and applies even before

1 a jury reaches a verdict. This in no way impedes upon the  
2 presumption of innocence, it is purely a term that denotes the status  
3 of an individual within a case.

4 Moreover, courts in this district have repeatedly permitted the  
5 use of the term "victim" at trial. See, e.g., United States v. Jose  
6 Jesus Perez, ED CR 13-087-VAP, Dkt. 106 at 13-14 (denying MIL to  
7 prevent using "victims" during voir dire, opening statements, and  
8 trial testimonies, and not requiring use of term "complaining  
9 witnesses").

### 10 **III. CONCLUSION**

11 For the foregoing reasons, the government respectfully requests  
12 that this Court deny defendant's motion in limine to preclude  
13 reference to government witnesses as "victims" (dkt. 78.)  
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